



Appeal Decision

Inquiry held on 26-29 January 2021 & 9-16 February 2021

Site visit made on 17 February 2021

by Claire Searson MSc PGDip BSc (Hons) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal Ref: APP/E2001/W/20/3250240

Land North West of Swanland Equestrian, West Field Lane, Swanland, East Riding of Yorkshire HU14 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Gladman Developments Ltd against the decision of East Riding of Yorkshire District Council.
 - The application Ref 19/00790/STOUT, dated 27 February 2019, was refused by notice dated 4 October 2019.
 - The development proposed is outline planning permission for up to 150 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water attenuation. With all matters reserved other than details of main site access and emergency access.
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Decision

1. The appeal is allowed and outline planning permission is granted for up to 150 residential dwellings (including up to 25% affordable housing), introduction of structural planting and landscaping, informal public open space and children's play area, surface water attenuation, with all matters reserved other than details of main site access and emergency access, at Land North West of Swanland Equestrian, West Field Lane, Swanland, East Riding of Yorkshire HU14 3PG in accordance with the terms of the application, Ref 19/00790/STOUT, dated 27 February 2019, subject to the attached schedule of conditions in Annex C.

Procedural Matters

2. The application was made in outline with all matters reserved other than means of access. An indicative development framework plan was provided detailing the layout and landscaping. I have had regard to it.
3. The Inquiry was jointly held with an appeal at Land East of the Balk, Pocklington.¹ While the sites are geographically separate and distinct, for consistency the appeals were conjoined due to a shared main issue relating to broad principles around the development plan spatial strategy, housing land supply and affordable housing. That appeal is subject to a separate decision letter, however my conclusions relating to the above broad matters are common to both appeals.

¹ APP/E2001/W/20/3259564

4. A unilateral undertaking (UU) was submitted in draft form, discussed at the Inquiry and subsequently finalised. I come to this below.

Main Issue

5. Whether the site is suitable for development, in the light of the locational policies in the development plan and other material considerations, including the housing land supply position.

Reasons

Site and area description

6. The appeal site comprises a single broadly rectangular field of around 8.5 hectares with a smaller section of a separate field jutting out to the north. It is currently used as a paddock which serves Swanland Equestrian Centre and West Field Farm which is located to the eastern boundary, along with modern development along Sykes Close, Galland Close and Welton Wold Way. Existing development along Mill Rise forms the southern boundary of the site. The western and northern boundaries are surrounded by open fields with boundary hedgerows, trees and an access track. Swanland is a village with a number of community services and facilities.

Proposals

7. The proposed residential development of up to 150 dwellings and 25% affordable housing, would take access from Sykes Close with an emergency/cycle and pedestrian access from an existing track to the south of West Field Farm. The indicative plan details landscape buffers around the site perimeter, a central area of open space, including a Local Equipped Area of Play (LEAP) and play space and an attenuation area to the northern 'nib' of the appeal site.

Planning Policy Context

8. The development plan includes the East Riding Local Plan Strategy Document (LPSD) which was adopted in April 2016 and the East Riding Local Plan Allocation Document (LPAD) which was adopted in July 2016.
9. LPSD Policy S3 seeks to focus development in a defined settlement network in order to ensure that the right level of development takes place in the right places. Swanland is identified by this policy as a Primary Village. The supporting text confirms that settlements in this tier support some limited new development with access to jobs, services and facilities. They exhibit similar characteristics to the next tier settlement – Rural Service Centres – which complement the role of towns by acting as small service hubs. Primary villages, however, don't necessarily support a wide network of service centres.
10. Development limits for the settlements listed in Policy S3 are also referenced and depicted on the Policies Map. The appeal site is located outside, but adjacent to, the development limits for Swanland. Land outside of the defined limits is classed as countryside and development in such locations is restricted to a number of exceptions by LPSD Policy S4.
11. Policy S5 sets the housing distribution for the settlement network over the plan period. Out of the total policy requirement of 3585 dwellings for Rural Service Centres and Primary Villages, Table 2 in the supporting text gives a figure of

165 units for Swanland. This policy also sets a requirement of 335 affordable homes per annum as part of the overall provision.

12. In combination, these policies establish the overall housing requirement figure, and a strategy for the pattern and scale of development across the District.

The Spatial Strategy

13. Due to the location of the site outside of the defined settlement limits, it is accepted by the appellant that the development would be in conflict with the abovementioned strategic policies S3, S4 and S5 of the LPSD. The nature of the conflict and the weight given to that is in dispute.
14. Within the LPSD, the Council took an employment led approach in determining the housing requirements set out in Policy S5 of 1400 dwellings per annum. The plan recognises that East Riding is a high demand area for housing and the scale and distribution of housing also was considered in respect of Hull so as not to undermine its regeneration.
15. However, when calculated from the LPSD base date, there has been a consistent shortfall of dwellings against the LPSD requirement which is now to the tune of 3149 dwellings. The LPSD did anticipate the rate of housebuilding would be below the requirement during the early years of the plan period, but with Figure 5 depicting from 2016-17 onwards the target would be continually exceeded. This was exceeded in 2018/19 with 1404 dwellings, but decreased in 2019/20 to 1241 and the general trend is that of a shortfall. That said, the level of completions is on an overall increasing upward trend which is set to continue.
16. In terms of distribution, the identification of Rural Service Centres and Primary Villages were influenced by geographical distribution and the role of settlements in the sub-area in which they serve. The LPSD was examined in 2015 and the examining Inspector's report² stated that the approach taken, which included the professional judgement of Officers, was reasonable and justified and he was of the firm view that the hierarchy of settlements is justified and settlements were placed in an appropriate category.
17. For Swanland, up until April 2020, 110 dwellings have been built. An additional 176 dwellings are also consented and anticipated to be built out within the next 5 years. This would exceed the housing requirement specified in Table 2 by 70%. In this regard, the settlement network hierarchy in S5 has already been unbalanced. The addition of a further 150 units as proposed would increase the total in Swanland to 436 dwellings which would represent a 160% increase from the Table 2 requirement. This would be significant and would further unbalance the established hierarchy in Policies S3 and S5.
18. Taking the above together, there is a clear mismatch between the LPSD requirement, which the District has consistently failed to meet over the plan period so far, and yet delivery is in excess of 70% for Swanland's specific level. This position is also similar for Pocklington whereby there is an excess against the Policy requirement of around 60%.
19. Paragraph 5.20 of the supporting text of the LPSD states that a review of the plan, including Policy S5 would take place by no later than 2020 to consider

² Report on the Examination of the East Riding Local Plan: Strategy Document dated 25 January 2016 SCD7.05

housing delivery across Hull and East Riding, along with the latest evidence on housing need. This was noted by the examining Inspector to the LPSD who considered it to be essential to the soundness of the plan.³ Work is underway with the publication of an Options Document in 2018⁴ which focussed on the housing requirement and a review of allocated sites. Questions were also put in respect of the distribution and settlement network with an option to retain the existing approach but to consider changes to the role or nature of settlements as part of the review. Further consultation is due in Spring 2021, although no specific timeline was specified.

20. The fundamental purpose of the locational policies in the LPSD is to ensure sustainable development which effectively manages the scale and distribution of new development. This is achieved by directing most new development to areas where there are services, facilities, homes and jobs, and where it can be served by the most sustainable modes of transport. While there is some concern locally regarding the changed bus service provision, and the future planned closure of the Doctor's surgery, Swanland as a settlement has a good range of services and facilities, together with good transport links.⁵ Geographically it is well placed to access the Major Haltemprice settlements and major employment sites. The Council did not dispute this, and I was able to see those services and facilities myself during the site visit.
21. Overall, the development would conflict with LPSD Policies S3, S4 and S5 which set the scale and distribution of development. In identifying that conflict, I recognise that there is a mismatch in terms of the locational distribution of development, which in Swanland is already significantly exceeding the LPSD figure, against the consistent under-delivery of the district-wide LPSD housing requirement and the identified, but yet, incomplete, review of the LPSD Policy S5.

Other Considerations

Housing Land Supply

22. There was a dispute as to whether the presumption in favour of sustainable development applies, as set out in paragraph 11 of the National Planning Policy Framework (the Framework) due to a lack of housing supply. Paragraph 11(d)(ii) states that where policies are out of date, permission should be granted unless any adverse impacts of doing so would be significant and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. It was common ground that 11(d)(i) was not relevant in this appeal.

Current situation

23. Paragraph 73 of the Framework requires that Councils should identify and update annually a supply of specific deliverable sites to provide a minimum of 5 years worth of housing against their housing requirement set out in adopted strategic policies. Where strategic policies are more than 5 years old, and unless the strategic policies have been reviewed and found not to require updating, this should be calculated against their local housing need (LHN). The LHN is the number of homes identified as needed through the application of the

³ Paragraph 90 of the Examiners report SCD7.05

⁴ Local Plan Review Options Document November 2018 SCD7.35

⁵ Details of which are set out in the Statement of Common Ground dated Jan 2021, paragraphs 2.2.4, 2.3.1-2.3.3

Standard Method (SM), which is detailed in National Planning Practice Guidance (PPG).

24. The agreed supply period for the determination of this appeal is 1 April 2020-31 March 2025. The LPSD is not yet 5 years old, although it will become so on the 7 April. The SM calculation would then kick in for the LHN.
25. As set out in the relevant Statement of Common Ground (SOCG)⁶ and the updated scenarios (INQ31), against the LPSD housing requirement the Council is currently unable to demonstrate a 5-year supply, with the Council considering they can currently demonstrate 4.96 years. This position has changed from the publication of the Housing Land Supply Position Statement (HLSPS) dated December 2020 which gives a figure of 5.0 years. This was due to concessions made in respect of some of the sites assessed as deliverable by the Council, including from communal accommodation.
26. Due to debate over the deliverable sites included in the Council's calculation, the appellant considers that the Council can only demonstrate a supply of 4.17 years against the LPSD requirement. Nevertheless, even at the Council's preferred figure, the so called 'tilted-balance' under paragraph 11(d)(ii) of the Framework would be engaged.

Hybrid Calculation

27. The Council's position is that as the LPSD will be over 5 years old imminently, a hybrid figure which is based on the LPSD requirement for year 1 and the SM for years 2-5 should be used. This position was adopted for the joined appeals and is not reflected in the most recent published HLSPS.
28. Under the SM calculation, the housing figure is considerably lower than the adopted plan requirement – a reduction from 1400 to 909⁷. Even when adding in a calculation for a shortfall and 5% buffer (the former is not a requirement of the SM calculation) the Council's position is that 6.15 years supply can be demonstrated. While the appellant disputes this approach and accounting for differences relating to site deliverability, the appellant considers that under this method, the Council could demonstrate 5.17 years supply. It is on this basis that the Council submits that the tilted balance should not apply.
29. Parties agreed that this appeal, and indeed the linked Pocklington appeal, provide the first time such an approach will have been formally tested. However, two appeal decisions in support of the Council's position were put before me.
30. The first is a Secretary of State (SoS) decision known as VIP Trading⁸ which was dated 3 June 2020. Here, the SoS disagreed with the Inspector that the presumption in favour of sustainable development applied due to the supply being between 4.49-4.99 years. This was on the basis that on adoption of the draft London Plan, revised housing targets would result in a 5-year housing land supply and it was noted that the housing targets in the draft plan were not due to be modified.

⁶ Statement of Common Ground (Housing Supply) dated 19 January 2021

⁷ SM requirement figure is taken from OR Proof of Evidence as it is not specifically detailed in the SOCG or INQ31

⁸ APP/G6100/W/19/3233585 (SCD7.62)

31. The second decision was for a site at Clacton-on-Sea⁹ dated 7 January 2021. While the Inspector acknowledges that, based on the SM the Council couldn't demonstrate the requisite 5-year supply, due to the imminent adoption of a new local plan with a different housing requirement figure indicating 6.14 year supply, the Inspector opted to rely on the new figure. Again, it was held that the presumption in favour of sustainable development did not therefore apply.
32. I accept there was a departure from paragraph 73 of the Framework in both examples. However, these decisions are materially different to the appeals now before me. Significant weight was given to the emerging housing figures and more specifically, the Inspector and SoS in both examples engaged paragraph 48 of the Framework which sets out criteria for determining what weight to give to emerging plans in accordance with their stage of preparation, the extent of unresolved objections, and consistency to the Framework.
33. The Council argues that paragraph 48 provides no basis for distinguishing the present circumstances, but there is no such direction in the Framework, or indeed in the PPG relating to the circumstances presented as part of these appeals in the way that there is for emerging local plans in paragraph 48.
34. The Framework adopts a clear period of 5 years in terms of housing land supply, and also in terms of local plan preparation and review.¹⁰ Paragraph 73 of the Framework is clear that a minimum of 5 years worth of deliverable sites should be calculated against either the housing requirement in the adopted strategic policies or the local housing need where the strategic policies are more than 5 years old (my emphasis). As part of this, the SM was introduced in 2018 in order to be simpler, quicker and more transparent and I am of the firm view that to adopt a hybrid approach would undermine that efficiency and transparency.

Future Supply

35. It should be noted that there was broad agreement that from 7 April 2021, the Council are highly likely to be able to demonstrate a 5 year supply based on the full SM calculation, although a precise figure could not yet be determined due to all the data required not yet being available.
36. I accept that in the very near future, this is a matter which would no longer be for debate as the need to use the SM will automatically kick in. This would also be as certain as the adoption of the new requirement figures in the above-mentioned appeals. However, based on my reasons above, that is itself not a reason to justify departure from paragraph 73 in such circumstances as presented here.

Conclusions on Housing Land Supply

37. To sum up, the LPSD requirement should be used and based on this, the Council are unable to demonstrate 5 years supply of housing. In accordance with footnote 7 of the Framework, the policies which are most important for determining the application, that being S3, S4 and S5, are deemed to be out of date. The tilted balance thus applies.

⁹ APP/P1560/W/20/3256190 (SCD7.77)

¹⁰ For example Framework paragraph 33

38. I will return to the matter of the extent of the shortfall and the weight to be given to this in light of the imminency of the 5-year anniversary of the LPSD in my section on the planning balance.

Highway Safety

39. There was local concern that the appeal proposal would be harmful to highway safety. East Riding of Yorkshire Council, as the local highways authority, has a statutory responsibility to ensure the safety of the local highway network. It has not raised objections to the scheme on these grounds and this is a matter of considerable importance.
40. The appellant also provided an updated Transport Assessment dated January 2020 in light of the local level of concern and a highways witness also provided a proof of evidence and attended the Inquiry to answer questions from the local residents and myself.
41. I have reviewed the evidence before me. I have also visited the site and the surrounding road network, although it is recognised that the inclement weather conditions, and the national lockdown would mean that the volume of traffic would not be particularly representative of more typical conditions. In any case, a site visit can only ever be a 'snapshot' in time and I am satisfied that I have sufficient material to come to a conclusion on this matter.
42. It is noted that the highways assessments and proposals have been developed over a period of some years. This follows the submission of a previous application at the site in 2016 and the submission of the appeal application to the Council, following ongoing discussions with the Highway Officers.
43. Access to the site would be taken via West Field Lane and Sykes Close. These serve mostly residential development, including age exclusive apartments at Swan House, along with the equestrian centre. Swanland Against Gladman (SAG) object to the data which underpins many of the measures and conclusions of the Transport Assessment.¹¹ This relates to traffic count data and the use of TRICs to model trip generation.
44. Traffic counts and the TRICS database are commonly used to assess housing applications. I accept that there may be some discrepancies in the traffic count data as highlighted by SAG, including from the original application and the current appeal application data, but this was acknowledged by the appellant and sensitivity checked on that basis. The use of TRICS database is an industry standard application which contains UK wide data from a wide range of sources, which is then tailored to local circumstances. These cannot ever be a perfect reflection of current and future highways conditions. However, having reviewed the evidence, I consider it to represent an appropriate and robust assessment.
45. While SAG have been proactive and sought to undertake their own means of assessments, the methodological approaches used also have shortfalls in terms of the assumptions made and I do not consider it to be a robust alternative measure to base my findings on.
46. The West Field Lane junction with West End, as the main through route in the settlement, has been shown to have sufficient capacity to accommodate the

¹¹ Transport Assessment February 2019 SCD1.07

- proposed development, subject to off-site mitigation works which could be secured by condition. These works have been developed in conjunction with Highways Officers and subjected to safety audits. They include provision of footways, pedestrian crossing points and altering the line markings.
47. The affected roads are limited to 30mph, but the speeds vary due to road conditions, for example from parked cars. Swanland in general is a historic village which has various pinch points due to the older road carriageways and use of modern vehicles and traffic levels. However, based on data, accidents tend to be limited and traffic speeds are naturally reduced.
48. I accept that visibility is limited when attempting to turn right from West Field Lane and a cautious exit is required by drivers. The realignment of the centre line marking will, in my view, assist slightly with this issue, but it is true that the visibility splays would not meet current guidelines.
49. The provision of a footway to the western side and the widening of the eastern side footway will assist pedestrian access at the junction. The crossing would be set in along West Field Lane but this would be of a sufficient distance and with cautious speeds of traffic, would not be likely to cause any safety concerns. Moreover, a footway also runs along the opposite side of West End.
50. My view is that the works to West Field Lane junction would strike an appropriate balance between pedestrian and driver use and safety. Furthermore, in light of the identified spare capacity at the junction, the development with the associated highways works would not exacerbate the current use of West Field Lane.
51. In terms of Sykes Close, this is a typical modern estate road which weaves its way around dwellings and a central area of communal open space. It is not a through route, with the connection north to Westerdale being pedestrian/cyclists only, so as not to provide a bypass from the main road in the town. The carriageway is around 5.4m wide and there is around a 90-degree bend which the road then continues west in the direction of the site. The development would effectively transform the highway from a 'Close' to a through route serving the development. Sykes Close would be utilised by much greater levels of traffic than at present which would include homeowners of the new dwellings, plus delivery vans and occasional use by HGVs, as well as weekly use by refuse collection vehicles.
52. However, the irregular road layout, plus parked cars along the highway would act as traffic calming features. It also appears that Sykes Close was designed to continue, as the Close does not have a formal turning head adjacent to the site boundary. I note the concerns of local residents but the widths of the roads do meet the required standards. In terms of the modelled trip generation, I am satisfied that Sykes Road has capacity to accommodate the predicted additional traffic. Construction traffic could be subject to a management plan, secured by condition. Larger vehicles would also benefit from the layout of the new road, which would mean that Sykes Close would not be required to be used as a turning facility.
53. Highways contributions towards improvements to the A164/B1231 roundabout, are also included in the submitted UU to secure necessary wider off-site works. No objection was made to these works and I see no reason to disagree. Other

works include improvements to the Westerdale connection but again there would be no adverse effect from these.

54. Based upon the Transport Assessment, there is no evidence that the local highway network would have insufficient capacity to safely accommodate the additional vehicles from the development. Taking the above into consideration, I am satisfied that there would be no highway safety implications arising from the proposed development, subject to mitigation measures secured by condition.

Character and Appearance

55. It is inevitable that any built development on open land will have an effect upon the landscape character and appearance and there would be visual effects. However, in light of the influence of existing built development, the enclosure provided by existing boundary trees and hedgerows and future layout and landscaping which will occur as part of reserved matters, I consider that any effects would be localised and negligible. Accordingly, and in line with the Landscape and Visual Appraisal¹² the development would not result in any unacceptable harm.

Non-Designated Heritage Assets

56. West Field Farm is a non-designated heritage asset. Its open rural surroundings would be lost, and the development would change its context by effectively enclosing it. However, its relationship with the outbuildings now used as the Equestrian centre would remain. In light of this, I find negligible harm. This is in line with the assessments of the Council.
57. The site may also contain archaeological deposits, however this is a matter that could be dealt with by condition.

Best and Most Versatile Agricultural Land

58. The land is classified as Grade 2 best and most versatile (BMV) land. However, it is currently used as part of the equestrian centre, so while it has a rural use, it is not in agricultural use. Moreover, as much of East Riding is Grade 1 or 2, the loss of this would be limited. The conflict in this regard would be at most, limited adverse.

Infrastructure/Cumulative Impact

59. Broad local concern is raised about the infrastructure capacity of Swanland to cope with the existing and pipeline levels of approved development, together with the proposal. I have dealt with topic specific matters related to cumulative effects in my decision. While I note that Swanland is set to expand significantly, there is no justification to withhold consent based upon my findings in respect of landscape and highways on this specific point. Education and highways contributions are also incorporated into the UU.

Water Supply

60. As a site for major development which is unplanned and unallocated, Yorkshire Water raised capacity concerns. However, these matters can be dealt with by

¹² Landscape and Visual Appraisal, Land West of Sykes Close, Swanland February 2019 SCD1.06

separate legislation. Sewerage and drainage can also be dealt with by condition.

Planning Benefits

61. For the avoidance of doubt, in ascribing weight to the benefits I have used the following scale: limited, moderate, significant and substantial.
62. It should be noted here that the generic nature of benefits was raised at the Inquiry. Generic or otherwise, a matter which is attributed either positive or negative weight, must be included in the planning balance. The fact that something is commonplace does not in itself justify a reduction in weight, which must be assessed on its own merits and on the basis of evidence.

Housing Delivery

63. While Swanland has a significant level of planned development, the delivery of housing is an undisputable benefit of the development in a District where the Council cannot currently demonstrate a 5-year supply. Whether the development will occur within 5 years of the date of the decision is unclear, but in any case, the delivery will assist in the overall supply in the District.
64. The actual supply is somewhere between 4.17 years (the appellant's position) and 4.96 years (the Council's position). The difference between the parties relates to the appropriate windfall allowance to be included and the difference in approach as to whether a number of the supply sites should be considered as deliverable or not having regard to the definition set out in the Glossary to the latest iteration of the Framework and the PPG¹³. This includes in relation to lead in-times.
65. For the purpose of this appeal, I shall adopt the supply position of the Council. That should not be interpreted as any indication that I necessarily agree with that position. I simply adopt it as a 'least-worse' scenario in order to assess the weight to be given. I am also mindful that the housing land supply position is time-limited and in a matter of weeks, the Council will be able to demonstrate an adequate supply.
66. The Government's objective is to significantly boost the supply of housing and this would normally attract significant weight. However, the time-limited nature of the somewhat small shortfall in supply, reduces the amount of weight and I consider that housing delivery attracts moderate weight, rather than the significant weight the appellant sought to argue.

Affordable Housing

67. As already identified in my decision, LPSD Policy S5 sets a requirement for 335 affordable homes per annum as part of the overall 1400 dwellings per annum target. Here the dispute between the parties goes to the weight that should be given to the provision of affordable housing from the development.
68. It was recognised by the examining Inspector for the LPSD that the affordable housing need in the East Riding is significant and pressing, but that the requirement set in Policy S5 falls short of the identified need which was calculated as 552 pa. A compromise was thus reached given that the delivery

¹³ Paragraph 007 Reference ID 68-007-20190722

of affordable housing would necessitate huge levels of growth.¹⁴ Paragraph 6.23 of the supporting text to the LPSD states that a review of the plan would be triggered where targets were not met.

69. Common ground was reached between parties in that there has been a sustained shortfall against the LPSD target in each year of the plan period which amounts to a deficit of 1657 affordable homes against the Policy S5 requirement. It was also agreed that at 1 December 2020, there are currently 7245 households on the Council's Housing Register, which has increased from 6553 as at 1 April 2020. Of those, 2741 households are identified as being in bands 1-7 which is of greatest need. There is also agreement that there has been a rise in people housed in temporary accommodation from 8 households in April 2019 to 59 households in April 2020 – a 637% increase.¹⁵
70. For Swanland specifically, the high levels of growth that have occurred as discussed above have also given rise to a healthy supply of affordable units. However, in light of the figures cited above, and setting aside the other points of debate between parties relating to the banding, waiting times and anticipated supply, in my view it is clear that the 'significant and pressing' need recognised by the examining Inspector, is now acute. While the offer of 25% affordable housing would only meet the policy minimum in LPSD Policy H2, the weight to be given to it as a benefit cannot be anything other than substantial.

Employment and Revenue

71. There would be employment benefits in terms of the provision of jobs during the construction phase. In the longer term there would also be further spending within local shops and facilities by the new population.
72. There was debate in terms of the New Homes Bonus (NHB) and Council Tax (CT) revenue generated by the development whereby the Council consider that Council tax will be mitigation and NHB sits alongside the planning system and is not intended to encourage housing development which would otherwise be inappropriate in planning terms.
73. Even if I was to concede the Council's point relating to the NHB and CT revenue, the employment benefits are matters to which I give moderate weight over the limited weight ascribed by the Council.

Open Space and Green Infrastructure

74. Open space, including a LEAP would be incorporated into the site. This would be policy compliant for the scale of development to serve the new residents and provision is made for it via the UU. It may be likely to be used by existing local residents, however, at outline stage, such benefits are difficult to quantify as the precise details of such provision are unknown. This would therefore represent a limited benefit.
75. Green infrastructure would provide mitigation in landscape terms, as detailed above. This would be neutral.

¹⁴ Paragraphs 154 & 155 of the Examining Inspectors Report (SCD7.05)

¹⁵ Figures all taken from the Affordable Housing Statement of Common ground dated 25 January 2021

Biodiversity

76. As set out within the Ecological Appraisal¹⁶, there would be proposed enhancements to biodiversity including introducing species rich grassland, scope for a wild-flower meadow, new hedgerows and trees, and water bodies associated with the balancing pond. Bird and bat boxes would also be provided. While such matters would represent benefits and could be secured by condition, the scope and scale of such enhancements are, as yet, undeterminable as part of the outline scheme. Such benefit thus would attract limited weight at this stage.

Planning Obligation

77. The UU was considered at the Inquiry. It was engrossed on 22 February 2021. I have considered the various obligations with regards to the statutory requirements in Regulation 122 of the Community Infrastructure Levy (CIL) Regulations and the policy tests in paragraph 56 of the Framework. It should be noted that the Deeds contain a "blue pencil" clause in the event I do not consider a particular obligation to be justified in these terms.
78. The obligation would secure the provision of 25% affordable housing in accordance with an approved affordable housing scheme which would set details of the numbers, type, tenure, mix, location, and management. I also note that it makes provision for an Affordable Housing Commuted Sum which would be payable in the unlikely event that a Registered Provider is not secured for the affordable housing provision. This is a necessary requirement that meets the specified provision, as referenced above, and as such is justified.
79. Education contributions are also included for primary and secondary provision. As previously detailed, highway contributions are also sought. The development would result in an enlargement of the local population with consequent impacts on local schools and highways infrastructure.
80. For all these reasons I am satisfied that all the obligations are necessary, directly related to the development and fairly related in scale and kind. They comply with Regulation 122 of the CIL Regulations and paragraph 56 of the Framework. They can be taken into account in any grant of planning permission.

Conditions

81. A list of planning conditions was drawn up by the main parties and discussed at the Inquiry. My consideration has taken account of paragraph 55 of the Framework and advice in the Planning Practice Guidance. In particular, I have had regard to the Government's intention that planning conditions should be kept to a minimum. I have changed the suggested wording in some cases to ensure that the conditions are precise, focused, comprehensible and enforceable.
82. I have attached conditions limiting the life of the planning permission and setting out the requirements for the reserved matters, in accordance with the requirements of the Act. I have also required development to be in accordance with the site plan, and I have included a condition for the maximum number of units to be developed at the site, for clarity.

¹⁶ Ecological Appraisal February 2019 SDC1.09

83. Conditions relating to land contamination and remediation are necessary due to the current use of the site. A condition for a wildlife enhancement plan is necessary in order to protect ecological interests and improve biodiversity. Although landscaping is a reserved matter, it is appropriate at this stage to ensure that protective measures for retained trees and hedgerows are provided during construction in order to protect wildlife and visual amenity and thus I have slightly amended the suggested wording to make this relevant for site clearance work, rather than tying into the reserved matters details.
84. Due to the prospect of archaeological finds on the site, a condition requiring a written scheme of investigation and other matters is necessary. While the site has a low flood risk, conditions are necessary for foul and surface water drainage. Conditions relating to foul water connections and water supply are covered by the Water Industry Act 1991 and thus are not necessary.
85. The construction period would inevitably cause some disturbance and inconvenience to those living and working in the area as well as to road users. A single combined condition requiring Management Plans for construction, traffic, environment and biodiversity is therefore necessary. The detail prescribed in the Council's preferred individual conditions is excessive and in any case the Council would have the overall control in discharging (or otherwise) the plans required in this condition. A separate condition setting out construction hours is also necessary for the same reason.
86. Affordable housing is secured by way of Planning Obligation, as discussed above. This also includes the provision of a commuted sum if necessary. Accordingly, I consider this to be the most appropriate way of securing affordable housing at the site. A condition is not therefore necessary.
87. Conditions relating to the provision of pedestrian and vehicular access to each dwelling, electric vehicle charging points, a landscape management plan, provision for a mix of housing types, and provision of open space relate directly to reserved matters and thus go beyond the scope of an outline consent. I acknowledge the importance of such matters, but the Council would have control on these matters at the reserved matters stage. Accordingly, I consider that the suggested conditions would be unnecessary.

Planning Balance

88. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations determine otherwise. The Framework makes clear that the planning system should be genuinely plan-led.
89. The site is outside of the defined settlement boundary and conflicts with the spatial strategy of the LPSD, as set out in policies S3, S4 and S5. This harm is a pure policy harm in that I have found no unacceptable harm to landscape character and appearance, and I have concluded that there are no issues in respect of accessibility and infrastructure. Such matters underpin the need for a spatial strategy. I have recognised that Swanland in particular is already in excess of its housing requirement, against a wider district-wide under delivery. The policy harm weighs against the proposal, as does the limited harm in terms of the loss of best and most versatile agricultural land. The lack of harm to these other matters is neutral in the balance, as is the effect upon highway safety, heritage assets and water supply.

90. Due to the housing land supply position, at this time, the tilted balance as set out in paragraph 11 of the Framework is engaged. This means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
91. I note that the application and appeal generated a significant amount of local objection and I note the Council's significant concerns that to allow the appeal would undermine the whole plan-led system. However, I have examined the benefits and have explained why I consider them relevant and the reason for the varying degree of weight that I have attributed to them. Benefits include affordable housing (substantial weight), general housing delivery (moderate weight), employment and revenue (moderate weight), open space (limited weight) and biodiversity (limited weight).
92. Drawing the above together, I conclude that the adverse effect of policy conflict and loss best and most versatile agricultural land would not significantly and demonstrably outweigh the benefits of these proposals.
93. Finally, a great many appeal decisions were put before me in evidence and cited in support of the parties' respective cases. In particular, the main issue in relation to the conflict with the spatial strategy has been examined a number of times by different Inspectors in the East Riding District, along with the issue of housing land supply.¹⁷ In all the examples, the appeals were dismissed. However, each decision turned on their own evidence, as has my decision. In all of the cases, the supply position was different and evidence has changed to reflect the passage of time. I have employed my own reasoned planning judgement in this case, and indeed in respect of the Pocklington Appeal, to which my overarching findings have been consistent.

Conclusion

94. For the reasons given above, and having regard to all matters raised, I conclude that the appeal should be allowed.

C Searson

INSPECTOR

¹⁷ APP/E2001/W/18/3207411 dated 5 June 2019 (SCD6.09)
APP/E2001/W/16/3151699 dated 13 March 2017 (SCD6.14)
APP/E2001/W/16/3165880 dated 17 August 2017 (SCD6.15)
APP/E2001/W/16/3165930 dated 2 November 2017 (SCD6.16)

ANNEX A: APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Charles Banner QC aided by Matthew Henderson of Counsel	Instructed by East Riding of Yorkshire Council
They called:	
Owen Robinson MA MRTPI	Principal Planning Policy Officer
Jennifer Downs BA (Hons) MRTPI	Principal Development Management Officer
Richard Ellam BEng CEng MCIHT	Divisional Director Pell Frischmann Engineers Ltd (Pocklington only)

FOR THE APPELLANT:

Thea Osmund-Smith of Counsel	Instructed by Gladman Developments Ltd
She called:	
Ben Pycroft BA (Hons) Dip TP MRTPI	Director Emery Planning Partnership
James Stacey BA (Hons) Dip TP MRTPI	Senior Director Tetlow King
David Schumacher MSc, DipMS, CMILT, MCIHT	Director Prime Transport Planning (Swanland only)
David Stoddart BA (Hons) CMILT, MCIHT, MTPS	Director Prime Transport Planning (Pocklington only)
John Mackenzie BSc DiP TP MRTPI	Planning Director – Gladman (Swanland only)
Stuart Carvel MTCP (Hons), MRTPI	Planning Director – Gladman (Pocklington only)

FOR POCKLINGTON TOWN COUNCIL:

Richard Wood BA (HONS) BPI MBA MRTPI	Director at Richard Wood Associates Ltd
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INTERESTED PERSONS:

Michael Thompson	Spokesperson, Swanland Against Gladman
Jan Brumby	Swanland Local Resident
Derek Shepherd	Chairman of Swanland Parish Council
Paul Lisseter	Williamsfield Developments Ltd

ANNEX B: INQUIRY DOCUMENTS

DOCUMENTS SUBMITTED AT THE INQUIRY

- INQ1: Affordable Housing Statement of Common Ground
- INQ2: CIL Compliance Statement (Swanland)
- INQ3: Housing Land Supply Consolidated Document – disputed sites.
- INQ4: Council's Opening Statement
- INQ5: Appellant Opening Statement
- INQ6: Pocklington Town Council (R6) Opening Statement
- INQ7: Cllr Derek Shepard Statement (Swanland)
- INQ8: Jan Brumby Statement plus photographs illustrating traffic issues (Swanland)
- INQ9: Appeal Decision ref APP/E2001/W/20/3259974 (Swanland)
- INQ10: Paul Liseter Statement
- INQ11: Pocklington CIL Compliance Statement
- INQ12: Email dated 27/01/2021 from Paul Liseter re Williamsfield (Hutton Cranswick) appeal.
- INQ13: Letter from ERYC Chief Executive
- INQ14: James Stacey Errata Correction Sheet
- INQ15: Email from Andrew Pearce re water mains pipe dated 25 January 2021
- INQ16: Swanland Site Visit Itinerary Rev A
- INQ17: Swanland Travelling Draft Conditions 3 February 2021
- INQ18: Swanland Schedule of weighting 4 February 2021
- INQ19: Pocklington Conditions 4 February 2021
- INQ20: Pocklington Schedule of weighting 4 February 2021
- INQ21: Pocklington Site Visit Route v2
- INQ22: Appendix D – TRICS analysis comparison version 3 (Swanland)
- INQ24: Wythall TRICS
- INQ25: Appellant response to Swanland TRICS data 4 February 2021
- INQ26: Richard Ellam Transport and Highways Position Statement (Pocklington)
- INQ27: David Stoddart Public Inquiry Spoken Evidence Examination Note (Pocklington)
- INQ28: Richard Wood Transport Round Table Position Statement (Pocklington)
- INQ29: Gladman Developments Limited v SSHCLG & Corby BC & Uttlesford DC [2021] EWCA Civ 104
- INQ30: Updated draft Unilateral Undertaking (Swanland) plus email dated 11 Feb 2021 with additional SUDS condition.
- INQ31: Housing Land Supply Scenarios document
- INQ32: Walking distances to bus stops 11 Feb 2021 (Swanland)
- INQ33: CIL Compliance Statement v3 (Pocklington)
- INQ34: Planning Obligation Summary (Pocklington)
- INQ35: Planning Obligation Summary (Swanland)
- INQ36: Email dated 12 February 2021 from Jan Brumby re Swanland Doctor's Surgery.
- INQ37: Closing submissions of behalf of East Riding of Yorkshire Council and separate authorities relied on in the LPA closing submissions bundle.
- INQ38: Closing submissions on behalf of Pocklington Town Council
- INQ39: Closing submissions on behalf of the Appellant and appellant reply to closing submissions table

DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

- Updated list of conditions – submitted 23 February 2021
- Certified copy of the UU – submitted 22 February 2021

ANNEX C: Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 7173-04 - B - Site Location Plan
 - P18110-001B - Proposed Access Strategy
- 5) No more than 150 dwellings shall be built on the site.
- 6) Unless otherwise agreed in writing with the Local Planning Authority no dwelling shall be occupied until the improvement works on West Field Lane including its junction with West End and any works required on Mill Rise, as indicated on Drawings P18110-001B, P18110-002B and P18110-006A, together with the works to the link path between Sykes Close and Westerdale to facilitate emergency vehicles, as indicated on Drawings P18110-001B, have been carried out in accordance with plans to be submitted to and approved in writing by the Planning Authority.
- 7) Before the development commences, an investigation and risk assessment of land contamination shall be completed by competent persons and a report of the findings submitted to and approved in writing by the Local Planning Authority. This shall include an appropriate survey of the nature and extent of any contamination affecting the site, and an assessment of the potential risks to human health, controlled waters, property and ecological systems. Where unacceptable risks are identified, an appropriate scheme of remediation to make the site suitable for the intended use must also be submitted to and approved in writing by the local planning authority.
- 8) Where remediation is necessary, and unless otherwise agreed in writing by the local planning authority, none of the dwellings shall be occupied until the approved scheme of remediation has been completed, and a verification report demonstrating the effectiveness of the remediation carried out has been submitted to and approved in writing by the local planning authority. The verification report shall include a description of the works undertaken and a photographic record where appropriate, the results of any additional monitoring or sampling, evidence that any imported soil is from a suitable source, and copies of relevant waste documentation for any contaminated material removed from the site. In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported immediately to the local planning authority. An appropriate investigation and risk assessment must be undertaken, and where

remediation is necessary, a remediation scheme must be prepared by competent persons and submitted to the local planning authority for approval. Following completion of measures identified in the approved remediation scheme, a verification report that demonstrates the effectiveness of the remediation carried out must be submitted to and approved in writing by the local planning authority.

- 9) Within one month of commencement of the development, a Wildlife Enhancement Plan (WEP) shall be submitted to and approved in writing by the Local Planning Authority. The WEP shall be compiled by a suitably qualified ecologist and include:
 - i) A timetable for implementation;
 - ii) A detailed plan showing the locations and specification of the enhancement measures;
 - iii) The enhancement measures outlined in Sections 5.49 to 5.55 of the Preliminary Ecological Appraisal (FPCR Environment and Design Ltd, February 2019);
 - iv) A 25% bird box to building ratio;
 - v) A 25% bat box/tube/adapted tile to building ratio;
 - vi) Details of the means of enclosure to demonstrate that boundary treatments will not result in a loss of habitat connectivity through the development, by creating 'hedgehog highways' which provide holes under boundary features for hedgehogs to pass through;
 - vii) Hedgehog friendly garden features including hedgehog houses which should be positioned round the site within hedge bases;
 - viii) Insect boxes and log piles to increase the habitat for local biodiversity;
 - ix) The landscaping strategy shall incorporate wildlife friendly landscaping throughout the site and utilise British species of local provenance wherever possible.
- 10) No site clearance, preparatory work or development shall take place tree and hedgerow protection measures have been put in place in accordance with the Figure 3 Tree Retention Plan and Appendix B Protective Fencing Specifications of the Arboricultural Assessment dated February 2019 and include an arboricultural method statement prepared in accordance with the recommendations of section 6 of the Arboricultural Assessment. The development shall be carried out in accordance with the approved plans and details.
- 11) Before the development commences, details of a surface water drainage scheme for the site shall be submitted to and approved in writing by the local planning authority. The submitted scheme shall:
 - i) include a site survey to determine if there is a piped land drainage system within the site/sites and include details of any mitigation works necessary to preserve flow from any adjacent affected sites;
 - ii) be designed to secure separate systems of drainage for foul and surface water. If it is proposed to discharge surface water to the public sewer network, it must be demonstrated to the satisfaction of the local planning authority that other means of surface water

drainage have been properly considered and are not reasonably practicable;

- iii) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- iv) include a timetable for its implementation;
- v) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out and maintained in accordance with the approved scheme and no dwelling shall be occupied until the surface water drainage scheme serving it is operational.

- 12) No development shall commence until an initial written scheme of investigation (WSI) for archaeological investigation has been submitted to and approved by the Local Planning Authority. The scheme shall include an assessment of significance and research questions; and:
- i) The programme and methodology of site investigation and recording
 - ii) Provision to be made for analysis of the site investigation and recording.
 - iii) The programme for post investigation assessment and mitigation recommendations.
 - iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - v) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

Development shall take place in accordance with the approved WSI. Unless otherwise agreed beforehand in writing with the Local Planning Authority, the development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with a programme of works set out in the approved WSI and the provision made for analysis, publication and dissemination of results and archive deposition has been secured. The archaeological programme shall be carried out as approved, unless otherwise agreed in writing beforehand with the Local Planning Authority.

- 13) Prior to the commencement of development, the following shall be submitted to and approved by the local planning authority:
- A Construction Method Statement (CMS)
 - A construction traffic management plan (CTMP)

- A construction environmental management for biodiversity plan (CEMP: Biodiversity)
- A construction environmental management plan for groundwater (CEMP: Groundwater)

The development shall be carried out in accordance with the approved CMS, CTMP, CEMP: Biodiversity and CEMP: Groundwater, unless otherwise agreed in writing by the Local Planning Authority.

- 14) During the construction phase of the development, no machinery shall be operated, no process shall be carried out and no construction traffic shall enter or leave the site outside the hours of 07.30 hours to 18.00 hours Monday to Friday, nor outside the hours of 08.00 hours and 13.00 hours on Saturdays, nor at any time on Sundays or Public Holidays, unless previously approved in writing by the Local Planning Authority.

End of schedule (14 Conditions)

Richborough Estates